State Board of Equalization

OPERATIONS MEMO

Confidential

No. : 1147
Date : April 13, 2007

SUBJECT: Successor Billings and Assumption of Liability

I. PURPOSE

Board policy requires supporting documentation, including proof of purchase price, to justify issuing a billing for successor's liability. The purpose of this operations memo is to identify documentation that would support a successor billing for sales and use tax when all or part of the consideration given in the sale of a business or stock of goods is an assumption of liability.

II. BACKGROUND

Revenue and Taxation Code section 6811 requires the purchaser of a business or stock of goods to withhold a sufficient amount of the purchase price to cover any amount due from the former owner unless the former owner produces a Certificate of Tax Payment from the Board showing that the tax has been paid, or that no amount is due. If the purchaser of a business or stock of goods fails to withhold from the purchase price as required, the purchaser becomes personally liable for payment of the amount required to be withheld to the extent of the purchase price valued in money (R&T Code section 6812).

A sale of a business or stock of goods is generally an "arm's length" transaction where two parties unrelated to one another act in good faith, and exchange valuable consideration reflecting the fair market value of the business or stock of goods being sold. In most transactions of this type, a sales contract identifies the parties to the contract, the consideration, and the value of the assets transferred. However, sometimes the sale of a business or stock of goods is not memorialized in a document that conveys the terms of the sale. These types of transfers often involve the purchaser's assumption of all or part of the seller's debt or the forgiveness by the purchaser of some or all of the debt owed to the purchaser by the seller. In these situations, further investigation is necessary to determine the type and amount of consideration to support the issuance of a successor billing.

[redacted]

III. PROCEDURES FOR ESTABLISHING SALES PRICE

[redacted] [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

B. Situations that may not support a Successor Billing

Certain types of transactions do not support the issuance of a successor billing. These transactions include but are not limited to:

1. A purchase of a business through a bankruptcy proceeding.
2. A purchase from a franchiser.
3. A purchase from a creditor who has obtained a judgment and seized the business assets.
4. A purchase from a landlord who has evicted a tenant and seized assets.

C. Requesting a Successor Billing.

All requests for successor billings are made through ACMS using Form BOE-200-A, *Special Procedures Action Request*. The BOE-200-A form is sent to the Special Procedures Section (SPS) in Headquarters along with copies of the supporting documentation and a separate memo that describes the reason for the request and basis for the assessment. The memo may also contain observations from field calls and other information developed from personal contacts.

D. Time Limits

If the purchaser of a business or stock of goods fails to request a sales tax clearance, the Board has three years from the date the Board had been notified in writing of the sale to issue a billing for successor's liability. [redacted]

III. OBSOLESCENCE

This Operations Memo will become obsolete when the confidential information contained herein is incorporated into the CPMG and the non-confidential information is incorporated into the CPPM.

Randie L. Henry
Deputy Director
Sales and Use Tax Department

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